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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

DEBRA SHORT,)	Case No. EDCV 09-02003-MLG
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of the)	
Social Security)	
Administration,)	
)	
Defendant.)	
_____)	

Plaintiff Debra Short ("Plaintiff") seeks judicial review of the Commissioner's final decision denying her applications for disability insurance benefits ("DIB") and supplemental security income benefits ("SSI") pursuant to Titles II and XVI of the Social Security Act. For the reasons stated below, the Commissioner's decision is reversed, and this action should be remanded for further proceedings.

I. Factual and Procedural Background

Plaintiff was born on October 29, 1962. (Administrative Record ("AR") at 72). She has a college degree and relevant work experience as a pharmacy technician. (AR at 15, 21).

1 Plaintiff filed applications for DIB and SSI in April 2007,
2 alleging disability as of December 1, 2003, based on low back pain, leg
3 pain, high blood pressure, diabetes, and high cholesterol. (AR at 72-86,
4 130-31). These applications were denied initially and on
5 reconsideration. (AR at 8, 39-44, 47-51).

6 At Plaintiff's request, an administrative hearing was held on March
7 18, 2009, before Administrative Law Judge F. Keith Varni ("the ALJ").
8 Plaintiff, who was represented by counsel, testified at the hearing. (AR
9 at 17-31).

10 On June 29, 2009, the ALJ issued a decision finding that Plaintiff
11 was not under a disability, as defined in the Social Security Act. (AR
12 at 8-16). The ALJ evaluated Plaintiff's claim of disability using the
13 five-step sequential evaluation process for disability required under
14 federal regulations. See 20 C.F.R. §§ 404.1520, 416.920. The ALJ found
15 Plaintiff had not engaged in substantial gainful activity since her
16 alleged onset date of disability (step one), and Plaintiff suffers from
17 the severe impairments of low back pain and obesity (step two), but
18 these conditions did not meet the requirements of any impairment in the
19 "Listings," 20 C.F.R. Part 404, Subpart P, Appendix 1 (step three). (AR
20 at 9, 12). With respect to Plaintiff's residual functional capacity, the
21 ALJ found Plaintiff was capable of the following: lifting and carrying
22 20 pounds occasionally and 10 pounds frequently; standing, walking, and
23 sitting six hours in an eight-hour workday; balancing, bending,
24 stooping, crouching, and kneeling occasionally; climbing of ramps,
25 stairs, ladders, ropes and scaffolds frequently; and crawling
26 frequently. (AR at 12, 14-15). Based on this residual functional
27 capacity, the ALJ determined that Plaintiff was capable of performing
28 her past relevant work as a pharmacy technician (step four). (AR at 15).

1 Therefore, the ALJ concluded that Plaintiff was not disabled. (AR at
2 15).

3 On August 21, 2009, the Appeals Council denied review and the
4 ALJ's decision became the final decision of the Commissioner. (AR at 1-
5 3). Plaintiff then commenced this action for judicial review.

6 The parties filed a Joint Stipulation of disputed issues on May 24,
7 2010. Plaintiff raises the following arguments:

8 1. The ALJ erred by failing to properly consider the
9 opinions of Plaintiff's treating physicians. (Joint
10 Stipulation 3-6, 11).

11 2. The ALJ erred by failing to properly consider the
12 demands of Plaintiff's past work. (Joint
13 Stipulation 12-14, 16-17).

14 3. The ALJ erred by failing to properly consider lay
15 witness testimony. (Joint Stipulation 17-19, 21).

16 Plaintiff seeks remand for a payment of benefits or, in the alternative,
17 remand for a new administrative hearing and further development of the
18 record. (Joint Stipulation at 21-22). The Commissioner requests that the
19 ALJ's Decision be affirmed. (Joint Stipulation at 22). The Joint
20 Stipulation has been taken under submission without oral argument.

21 22 **II. Standard of Review**

23 Under 42 U.S.C. § 405(g), a district court may review the
24 Commissioner's decision to deny benefits. The Commissioner's or ALJ's
25 findings and decision should be upheld if they are free from legal error
26 and are supported by substantial evidence based on the record as a
27 whole. 42 U.S.C. § 405(g); *Richardson v. Perales*, 402 U.S. 389, 401
28 (1971); *Holohan v. Massanari*, 246 F.3d 1195, 1201 (9th Cir. 2001).

1 Substantial evidence means such evidence as a reasonable person might
2 accept as adequate to support a conclusion. *Richardson*, 402 U.S. at 401;
3 *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1996). It is more than a
4 scintilla, but less than a preponderance. *Reddick*, 157 F.3d at 720. To
5 determine whether substantial evidence supports a finding, the reviewing
6 court "must review the administrative record as a whole, weighing both
7 the evidence that supports and the evidence that detracts from the
8 Commissioner's conclusion." *Id.* "If the evidence can reasonably support
9 either affirming or reversing," the reviewing court "may not substitute
10 its judgment" for that of the Commissioner. *Id.* at 720-721.

11 12 **III. Discussion**

13 **A. Treating Physician's Opinion**

14 Plaintiff received treatment at the Community Health Alliance of
15 Pasadena ("CHAP") from June 2002 through May 2007 for a variety of
16 conditions, including hypertension, lumbosacral impingement, abdominal
17 pain, and numbness and decreased sensation in her toes. (AR at 192-319,
18 347, 363-66, 505, 537). Plaintiff reported that she was seen primarily
19 by three physicians at CHAP, Maria Mason, M.D., Daisy Eng, M.D. and Ulin
20 Sargeant, M.D. (AR at 180). Plaintiff saw Dr. Sargeant from October 2006
21 through May 2007. (AR at 180). Although the record contains at least a
22 hundred pages of chart notes and referral forms from Dr. Eng, Dr. Mason,
23 and other CHAP physicians, the only record from Dr. Sargeant was a state
24 disability form titled "Physician's Supplementary Certificate" and dated
25 February 20, 2007. (AR at 537). Dr. Sargeant reported that Plaintiff was
26 suffering from lower back pain, and was "still limited in certain weight
27 bearing exercises despite our recent achievement of pain control." (AR
28 at 537). Dr. Sargeant opined that Plaintiff would require further

1 assessment "via orthopedics," and that Plaintiff was not expected to be
2 able to perform her regular work until August 20, 2007. (AR at 537).

3 In contravention of the governing regulations, the ALJ completely
4 disregarded Dr. Sargeant's opinion. See 20 C.F.R. §§ 404.1527(d)
5 ("[r]egardless of its source, we will evaluate every medical opinion we
6 receive"), 416.927(d) (same). In fact, the ALJ did not discuss any of
7 the CHAP records at all. Although the ALJ was not required to discuss
8 every piece of evidence in the record, he was obligated to address
9 significant, probative evidence. See *Vincent v. Heckler*, 739 F.2d 1393,
10 1394-95 (9th Cir. 1984).

11 The Commissioner contends Dr. Sargeant's report was not significant
12 because "a one-page certification from a doctor stating the claimant
13 could not return to work [] is not a medical opinion and does not prove
14 disability." (Joint Stipulation at 7). The Court disagrees. Clearly, Dr.
15 Sargeant's opinion, addressing Plaintiff's ability to work, was
16 significant evidence. Although the ALJ does not have to follow the
17 medical opinion of a treating physician, he "must give specific,
18 legitimate reasons for disregarding the opinion of the treating
19 physician." *Batson v. Commissioner of Social Security Administration*,
20 359 F.3d 1190, 1195 (9th Cir. 2004) (quoting *Matney v. Sullivan*, 981
21 F.2d 1016, 1019 (9th Cir. 1992)). If the ALJ thought he needed
22 additional information to properly evaluate Dr. Sargeant's opinion, he
23 had a duty to conduct an appropriate inquiry. See, e.g., *Smolen v.*
24 *Chater*, 80 F.3d 1273, 1282, 1286, 1288 (9th Cir. 1996) (finding legal
25 error where ALJ ignored medical evidence of claimant's other impairments
26 and additional legal error where ALJ rejected uncontradicted opinion of
27 treating physician without developing the record).

28 In sum, the ALJ failed to adequately assess the medical report from

1 Plaintiff's treating physician, Dr. Sargeant. Because the record remains
2 undeveloped with respect to this opinion, the Court is not able to
3 determine whether the medical and other evidence compels the conclusion
4 that Plaintiff is disabled. Thus, remand for an award of benefits is not
5 justified. See *Harman v. Apfel*, 211 F.3d 1172, 1179-80 (9th Cir. 2000).
6 Instead, this case should be remanded for further proceedings so that
7 the ALJ may consider the opinion of Plaintiff's treating physician,
8 determine what weight to give that opinion, and conduct any further
9 proceedings that may be necessary.¹

10
11 **IV. Conclusion**

12 Accordingly, **IT IS HEREBY ORDERED** that this matter be remanded to
13 the defendant for further proceedings consistent with this Memorandum
14 Opinion and Order.

15
16 DATED: June 30, 2010



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19 MARC L. GOLDMAN
United States Magistrate Judge

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21
22 ¹ Because the ALJ improperly rejected Dr. Sargeant's opinion and
23 the record is not sufficiently developed to support a determination of
24 disability without further proceedings, the Court will not decide
25 whether the remaining issues raised by Plaintiff would independently
26 require reversal. See *Bunnell v. Barnhart*, 336 F.3d 1112, 1115-16 (9th
27 Cir. 2003) (where there are outstanding issues that must be resolved
28 before a determination of disability can be made, and it is not clear
from the record that the ALJ would be required to find the claimant
disabled if all the evidence were properly evaluated, remand is
appropriate). The Court recommends, however, that the ALJ consider all
of Plaintiff's arguments when determining the merits of her case on
remand.